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8 UNITED STATES DISTRICT COURT

9 NORTHERN DISTRICT OF CALIFORNIA – OAKLAND DIVISION

10
11 Jhoana Pagtakhan

12 Plaintiff,

13 v.

14 TD Bank USA, N.A.,

15 Defendants.
16

CASE NO. 4:21-cv-00151

PLAINTIFF’S COMPLAINT FOR DAMAGES:

1. Violation of the Rosenthal Fair Debt Collection Practices Act
2. Violation of the Telephone Consumer Protection Act

17
18 COMES NOW Plaintiff Jhoana Pagtakhan, an individual, based on information and belief,
19 to allege as follows:

20 **INTRODUCTION**

21 1. This is an action for damages brought by an individual consumer for Defendant’s violations
22 of the Rosenthal Fair Debt Collection Practices Act, Cal. Civ. Code §1788, *et seq.* (hereinafter
23 “Rosenthal Act”), which prohibits debt collectors from engaging in abusive, deceptive, and unfair
24 practices and violation of the Telephone Consumer Protection Act 47 U.S.C. §227, *et seq.*
25 (hereinafter “TCPA”), which prohibits the use of automated dialing equipment when making calls
26 to consumers.
27
28

1 2. Plaintiff brings this action against Defendant TD Bank USA, N.A. (hereinafter
2 “Defendant” or “TD Bank”) for its abusive and outrageous conduct in connection with debt
3 collection activity.

4 3. In Calif. Civil Code § 1788.1(a)-(b), the California Legislature made the following findings
5 and purpose in creating the Rosenthal Act:

6 (a)(1) The banking and credit system and grantors of credit to consumers are
7 dependent upon the collection of just and owing debts. Unfair or deceptive
8 collection practices undermine the public confidence which is essential to the
9 continued functioning of the banking and credit system and sound extensions of
10 credit to consumers.

11 (2) There is need to ensure that debt collectors and debtors exercise their
12 responsibilities to another with fairness and honesty and due regard or the rights of
13 the other.

14 (b) It is the purpose of this title to prohibit debt collectors from engaging in unfair
15 or deceptive acts or practices in the collection of consumer debts and to require
16 debtors to act fairly in entering into and honoring such debts, as specified in this
17 title.

18 4. While many violations are described below with specificity, this Complaint alleges
19 violations of the statutes cited in their entirety.

20 5. The TCPA was designed to prevent calls like the ones described herein, and to protect the
21 privacy of citizens like Plaintiff, and by enacting the TCPA, Congress intended to give consumers
22 a choice as to how corporate entities may contact them and to prevent the nuisance associated with
23 automated or prerecorded calls.

24 **JURISDICTION & VENUE**

25 6. This Court has jurisdiction under 28 U.S.C. §§ 1331, 1337, and 1367, and 47 U.S.C. §
26 227.

27 7. This venue is proper pursuant to 28 U.S.C. §1391(b).

28 **GENERAL ALLEGATIONS**

1 Plaintiff Jhoana Pagtakhan (hereinafter “Plaintiff”) is an individual residing in the state
of California and is a “debtor” as defined by Cal. Civ. Code §1788.2(g).

1 9. At all relevant times herein, TD Bank was a company engaged, by the use of mail, email,
2 and telephone, in the business of collecting a debt from Plaintiff, and a “consumer debt,” as defined
3 by Cal. Civ. Code §1788.2(f).

4 10. At all relevant times, Defendant acted as a “debt collector” within the meaning of Cal.
5 Civ. Code §1788.2(c)

6 11. Plaintiff opened an unsecured credit account with Defendant through a Nordstrom’s
7 branded credit card.

8 12. The account Plaintiff opened with Defendant was primarily for personal, family or
9 household purposes and is therefore a “debt” as that term is defined by the Calif. Civil Code §
10 1788.2(d) of the Rosenthal Act.

11 13. Defendant has been attempting to collect on a debt that originated from monetary credit
12 that was extended primarily for personal, family, or household purposes, and was therefore a
13 “consumer credit transaction” within the meaning of Calif. Civil Code § 1788.2(3) of the Rosenthal
14 Act.

15 14. Because Plaintiff, a natural person allegedly obligated to pay money to Defendant arising
16 from what Plaintiff is informed and believes was a consumer credit transaction, the money
17 allegedly owed was a “consumer debt” within the meaning of California Civil Code § 1788.2(f)
18 of the Rosenthal Act.

19 15. Plaintiff is informed and believes that Defendant is one who regularly collects or attempts
20 to collect debts on behalf of themselves, and is therefore a “debt collector” within the meaning of
21 the Calif. Civil Code § 1788.2(c) of the Rosenthal Act, and thereby engages in “debt collection”
22 within the meaning of the California Civil Code § 1788.2(b) of the Rosenthal Act, and is also
23 therefore a “person” within the meaning of California Civil Code § 1788.2(g) of the Rosenthal
24 Act.

25 16. Plaintiff’s account was an unsecured credit account and Plaintiff began making payments
26 on the card shortly after it was opened.

27 17. Plaintiff was making payments on the account before she became financially unable to
28 keep up with the monthly payments.

1 18. Defendant began contacting Plaintiff in approximately April of 2020 to inquire about the
2 status of the accounts and to collect on the payments that were no longer being made.

3 19. Plaintiff retained counsel to assist in dealing with Defendant's debt and to seek some type
4 of financial relief.

5 20. Counsel for Plaintiff sent Defendant a letter confirming representation of Plaintiff and
6 informing Defendant that it was to no longer contact Plaintiff directly and that all
7 calls/letters/collection efforts were to no longer be directed at Plaintiff.

8 21. The contents of the letter also informed Defendant that Plaintiff was withdrawing her
9 consent to be contacted on her cellular telephone.

10 22. Counsel for Plaintiff sent the certified letter of representation to Defendant on July 15,
11 2020.

12 23. Defendant received and processed the letter on July 21, 2020.

13 24. Plaintiff informed Defendant that she was revoking her consent to be called on her
14 telephone in July of 2020.

15 25. Defendant continued to contact Plaintiff between approximately July 24, 2020 through
16 December 2020; the type of contact was through phone calls to Plaintiff's cellular telephone.

17 26. Defendant would sometimes call Plaintiff numerous times each day demanding payment
18 on the account.

19 27. Defendant would use an automatic dialing machine when placing the calls to Plaintiff.

20 28. Plaintiff was contacted repeatedly regarding non-payment of the debt owed to Defendant
21 despite Defendant being notified that Plaintiff had retained counsel to deal specifically with the
22 debt owed to Defendant and that Plaintiff revoked consent to be contacted on her cellular
23 telephone.

24 29. Defendant's calls were frequent in nature and continued despite receiving written
25 confirmation that Plaintiff was represented by an attorney and that all calls to Plaintiff's cellular
26 telephone were to stop.

1 30. Despite receiving written notice regarding Plaintiff's representation by counsel and
2 revocation of her consent to be contacted on her cellular telephone Defendant continued to call
3 and contact Plaintiff daily regarding her account with Defendant.

4 **FIRST CAUSE OF ACTION**
5 (Violation of the Rosenthal Act)
6 (Cal. Civ. Code §§ 1788-1788.32)
7 (Against Defendant TD Bank)

8 31. Plaintiff realleges and incorporates herein the allegation in each and every paragraph
9 above as though fully set forth herein.

10 32. Plaintiff provided written notice that she was represented by sending Defendant a letter
11 with the name, address, and contact information of her attorney and informed Defendant that she
12 was represented.

13 33. Defendant continued to call and attempt to make contact with Plaintiff despite receiving
14 notice of representation and being informed that Plaintiff had retained counsel in an effort to deal
15 with the debt that was owed to Defendant.

16 34. The calls and communications made by Defendant to Plaintiff were not related to
17 statements of Plaintiff's account and were attempts to collect a debt.

18 35. Plaintiff received calls from Defendant beginning approximately July 24, 2020 –
19 December 2020.

20 36. Defendant violated Cal. Civ. Code §1788.14 by contacting Plaintiff after receiving noticed
21 that Plaintiff had retained an attorney.

22 **SECOND CAUSE OF ACTION**
23 (Violation of the Rosenthal Act)
24 (Cal. Civ. Code §§ 1788-1788.32)
25 (Against Defendant TD Bank)

26 37. Plaintiff realleges and incorporates herein the allegation in each and every paragraph
27 above as though fully set forth herein.

28 38. Defendant placed an excessive amount calls to Plaintiff.

39. Plaintiff was contacted multiple times per day by Defendant.

1 40. Defendant violated Cal. Civ. Code §1788.11.

2 **THIRD CAUSE OF ACTION**

3 (Violation of the TCPA)

4 (47 USC § 227)

(Against Defendant TD Bank)

5 41. Plaintiff realleges and incorporates herein the allegation in each and every paragraph above
6 as though fully set forth herein.

7 42. Since at least early April of 2020 Defendant started calling Plaintiff's cellular telephone
8 requesting that payment be made on the account Plaintiff held with Defendant.

9 43. Defendant was informed that Plaintiff revoked her consent to be contacted by Defendant
10 in July of 2020.

11 44. Defendant called Plaintiff numerous times since Plaintiff withdrew her consent to be
12 contacted by an automatic dialing machine.

13 45. Defendant would contact Plaintiff nearly daily regarding payment on the accounts.

14 46. Defendant placed the above cited calls using an artificial or prerecorded voice to deliver
15 the collection messages without Plaintiff's prior express consent.

16 47. All calls placed by Defendant to Plaintiff utilized an "automatic telephone dialing system"
17 as defined by 47 U.S.C. §227(a)(1).

18 48. These calls were made to Plaintiff's cellular telephone and were not calls for an emergency
19 purposed as defined by 47 U.S.C. §227(b)(1)(B).

20 49. Plaintiff expressly revoked any consent that may have previously been given to Defendant
21 to be contacted by an automatic dialing machine in July of 2020.

22 50. Overall Plaintiff was contacted by Defendant on her cellular phone between July 24, 2020
23 – December 2020.

24 51. Defendant contacted Plaintiff on at least 32 (thirty-two) separate occasions after Plaintiff
25 revoked her consent to be contacted on her cellular phone with an ATDS.

26 52. These telephone calls by Defendant, or its agent, violated 47 U.S.C. §227(b)(1)(A)(iii).

27 **PRAYER FOR RELIEF**

28 WHEREFORE, Plaintiff prays for judgment as follows:

